211 CMR 37.00: INFERTILITY BENEFITS

Section

37.01: Authority

211 CMR 37.00 is issued under the authority of M.G.L. chs. 175; 176A; 176B; 176D and 176G.

37.02: Purpose

The purpose of 211 CMR 37.00 is to implement St. 1987, c. 394, an Act Providing a Medical Definition of Infertility.

37.03: Definitions

The following words as used in 211 CMR 37.00 shall be defined as follows:

Commissioner: The Commissioner of Insurance or his or her designee.

Experimental infertility procedure: A procedure not yet recognized as non-experimental as defined below.

Infertility: The condition of a presumably healthy individual who is unable to conceive or produce conception during a period of one year.

Insured: A subscriber, member, policy holder, certificate holder or his or her covered spouse or other covered dependent.

Insurer: Any company as defined in M.G.L. c. 175, § 1 and authorized to write accident and health insurance; any hospital service corporation as defined in M.G.L. c. 176A, § 1; any medical service corporation as defined in M.G.L. c. 176B, § 1; or any health maintenance organization as defined in M.G.L. c. 176G, § 1.

Non-experimental infertility procedure: A procedure which is:

(a) Recognized as such by the American Society for Reproductive Medicine or the American College of Obstetrics and Gynecology (ACOG) or another infertility expert recognized as such by the Commission; and

(b) Incorporated as such in 211 CMR 37.00 by the Commissioner pursuant to M.G.L. c. 30A.

37.04: Scope of Coverage

Insurers shall provide benefits for required infertility procedures, as described in 211 CMR 37.05, which are furnished to an insured, covered spouse and/or other covered dependent.

Insurers shall not be required to provide benefits for services furnished to a spouse or dependent if the spouse or dependent is not otherwise covered by the insurer, except as provided in 211 CMR 37.05(4).

37.05: Required Infertility Benefits

Subject to any reasonable limitations as described in 211 CMR 37.08, insurers shall provide benefits for all non-experimental infertility procedures including, but not limited to:

(1) Artificial Insemination (AI);

(2) In Vitro Fertilization and Embryo Placement (IVF-EP).

(3) Gamete Intra fallopian Transfer (GIFT).

(4) Sperm, egg and/or inseminated egg procurement and processing, and banking of sperm or inseminated eggs, to the extent such costs are not covered by the donor's insurer, if any.

(5) Intracytoplasmic Sperm Injection (ICSI) for the treatment of male factor infertility.

(6) Zygote Intrafallopian Transfer (ZIFT).

37.06: Prescription Drugs

Insurers shall not impose exclusions, limitations or other restrictions on coverage for infertility-related drugs that are different from those imposed on any other prescription drugs.

37.07: Optional Infertility Benefits

No insurer shall be required to provide benefits for:

(1) Any experimental infertility procedure, until the procedure becomes recognized as non-experimental and is so recognized by the Commissioner;

(2) Surrogacy;

(3) Reversal of Voluntary Sterilization;

(4) Cryopreservation of eggs.

37.08: Prohibited Limitations on Coverage

(1) No insurer shall impose deductibles, copayments, coinsurance, benefit maximums, waiting periods or any other limitations on coverage for required infertility benefits which are different from those imposed upon benefits for services not related to infertility.

(2) No insurer shall impose pre-existing condition exclusions or pre-existing condition waiting periods on coverage for required infertility benefits. No insurer shall use any prior diagnosis of or prior treatment for infertility as a basis for excluding, limiting or otherwise restricting the availability of coverage for required infertility benefits.

37.09: Permissible Limitations on Coverage

Insurers may establish reasonable eligibility requirements, based upon the insured's medical history, and reasonable provider contracting standards. Eligibility requirements based solely on arbitrary factors including, but not limited to, number of attempts or dollar amounts, shall be presumed invalid. These requirements and standards shall be maintained in written form and shall be available to any insured and/or the Commissioner upon request. Standards or guidelines developed by the American Society for Reproductive Medicine or the American College of Obstetrics and Gynecology may serve as a basis for these eligibility and contracting requirements.

37.10: Recognition of Additional Non-Experimental Procedures

Any person may petition the Commissioner for the recognition of a procedure as non-experimental, as that term is defined in 211 CMR 37.03.

37.11: Effective Date

211 CMR 37.00 shall apply to any contract, policy or plan offering hospital, surgical or medical expense coverage as described in M.G.L. c. 175, §§ 108 and 110, M.G.L. c. 176A, M.G.L. 176B, and M.G.L. c. 176G, and which is issued or renewed, within or without the Commonwealth, on or after January 6, 1988, and providing coverage for any Massachusetts resident. The promulgation of 211 CMR 37.00 is necessary to preserve the public health, safety and general welfare and to afford full coverage to those with an need for infertility benefits, thereby implementing the public policy of the Commonwealth as evidenced by St. 1987, c. 394.

37.12: Severability

If any section or portion of a section of 211 CMR 37.00 or the applicability thereof to any person, entity or circumstance is held invalid by a court, the remainder of 211 CMR 37.00 or the applicability of such provision to other persons, entities or circumstances shall not be affected thereby.

REGULATORY AUTHORITY

211 CMR 37.00: M.G.L. chs. 175, 176A, 176B, 176D and 176G; St. 1987, c. 394.

NON-TEXT PAGE